

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

|                          |   |                  |
|--------------------------|---|------------------|
| UNITED STATES OF AMERICA | ) |                  |
|                          | ) |                  |
| Plaintiff,               | ) |                  |
|                          | ) |                  |
|                          | ) |                  |
| v.                       | ) | 1:08cr0001 (JCC) |
|                          | ) |                  |
|                          | ) |                  |
| ROBERT JONES             | ) |                  |
|                          | ) |                  |
| Defendant.               | ) |                  |

**M E M O R A N D U M   O P I N I O N**

This matter is before the Court on Spencer Anthony Peters's (Peters) Motion to Unseal Pre-Sentence Report and Other Documents filed under seal in this case. For the following reasons, the Court will deny the motion.

**I. Background**

Peters filed this motion on October 3, 2008. Mr. Robert Jones (Jones) opposed the motion on October 13, 2008. Peters filed an Amended Motion on October 31, 2008. Jones submitted a notice to the Court that he was relying on the arguments in his opposition on November 3, 2008. This matter is currently before the Court.

**II. Analysis**

According to Petitioner, criminal charges are currently pending against him in the Circuit Court for the City of

Richmond. He asserts that Jones is scheduled to testify on behalf of the Commonwealth of Virginia at that trial. Petitioner believes that a pre-sentence report and information on sentencing guidelines were filed under seal in *United States v. Jones*, 1:08cr1, prior to Jones's sentencing in this matter on February 8, 2008. Petitioner also believes that there are other documents and motions filed under seal that outline Jones's criminal history and conduct. Petitioner argues that, under *In re Washington Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986),<sup>1</sup> he is entitled to access these documents.

Jones objects to this motion, stating that he does not know Petitioner, has no information about his case, and does not believe that he is a witness against Peters. Jones also submits that Virginia Supreme Court Rule 3A:11, which requires the Commonwealth to provide all exculpatory information to Peters prior to his trial, makes this motion unnecessary.

The Court finds that Petitioner has not provided the Court with sufficient information on which to base a decision to unseal documents from *United States v. Jones*. It also notes that the Virginia Supreme Court Rules may be insufficient if the Commonwealth does not know of or possess sealed documents from

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<sup>1</sup> *In re Washington Post* held that criminal proceedings may be closed to the public, consistent with the First Amendment right of access to criminal proceedings, only if (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, that compelling interest would be harmed; and (3) there are no alternatives that would adequately protect that interest. *Id.* at 391.

that case. For these reasons, the Court will deny Petitioner's motion without prejudice. Should Petitioner later show that Jones will in fact testify against him, the Court is prepared to deliver the sealed records to the Virginia Circuit Court judge presiding over the matter for review. If the Circuit Court determines that the sentencing documents are exculpatory or relevant to impeachment, the Court will unseal the documents to Petitioner and the Commonwealth.

#### **IV. Conclusion**

For these reasons, the Court will deny Peters's motion.

An appropriate Order will issue.

November 14, 2008  
Alexandria, Virginia

\_\_\_\_\_/s/\_\_\_\_\_  
James C. Cacheris  
UNITED STATES DISTRICT COURT JUDGE